

1 Thomas R. Beer (148175)  
William Lee (148652)  
2 BARGER & WOLEN LLP  
650 California Street, 9th Floor  
3 San Francisco, California 94108  
Telephone: (415) 434-2800  
4 Facsimile: (415) 434-2533

5 Attorneys for Counterclaim Defendant  
NATIONAL UNION FIRE INSURANCE  
6 COMPANY OF PITTSBURGH, PA

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 FEDERAL INSURANCE COMPANY, an  
Indiana corporation,

13 Plaintiff,

14 vs.

15 ST. PAUL FIRE & MARINE INSURANCE  
16 COMPANY, a Minnesota corporation,

17 Defendant.

18 ST. PAUL FIRE AND MARINE  
19 INSURANCE COMPANY, a Minnesota  
corporation,

20 Counter-Claim Plaintiffs,

21 vs.

22 FEDERAL INSURANCE COMPANY, an  
23 Indiana corporation, and NATIONAL UNION  
FIRE INSURANCE COMPANY OF  
24 PITTSBURGH, PA, a Pennsylvania  
corporation,

25 Counter-Claim Defendants.  
26  
27  
28

CASE NO.: C 05-01878 JW

STIPULATION AND [PROPOSED]  
ORDER TO EXTEND CERTAIN  
PRETRIAL DATES AND THE DATE OF  
THE PRELIMINARY PRETRIAL AND  
TRIAL SETTING CONFERENCE

j:\office2\29073\054\07discovery\stip to continue pretrial dates.doc

STIP. AND [PROPOSED] ORDER TO EXTEND CERTAIN PRETRIAL DATES AND  
THE PRELIMINARY PRETRIAL CONFERENCE

1 Plaintiff FEDERAL INSURANCE COMPANY ("Federal"), Defendant and  
2 Counter-Claimant ST. PAUL FIRE AND MARINE INSURANCE COMPANY ("St. Paul"), and  
3 Counter-Claim Defendant NATIONAL UNION FIRE INSURANCE COMPANY OF  
4 PITTSBURGH, PA ("National Union"), by and through their respective attorneys of record, hereby  
5 agree and stipulate as follows:

- 6 1. By Court order dated August 8, 2007, the Court set a pretrial schedule for  
7 the case. Attached hereto as **Exhibit A**. Of the dates relevant to this  
8 stipulation, the Court ordered that the last day to hear dispositive motions  
9 would be February 4, 2008 which would require the parties to file their  
10 dispositive motions by December 31, 2007 in order to comply with the 35-  
11 day notice period of L.R. 7-2. Although the parties will file their  
12 dispositive motions prior to December 31, 2007 deadline, the February 4,  
13 2008 date is no longer available and the next earliest available date is not  
14 until March 10, 2008. Because the Court will not be able to hear the  
15 parties' motion by the February 4, 2008 hearing deadline, the parties  
16 respectfully request that the Court extend the dispositive hearing deadline  
17 from February 4, 2008 to March 17, 2008 (in case the March 10, 2008 also  
18 becomes unavailable). The continuance does not affect or change the  
19 December 31, 2007 date to file dispositive motions.
- 20 2. In addition, the Court's August 8, 2007 order set a Preliminary Pretrial  
21 Conference and Trial Setting Conference ("Pretrial Conference") for March  
22 3, 2008. In view of the parties' request to extend the dispositive hearing  
23 deadline and the fact that the parties' dispositive motion will not be heard  
24 prior to March 17, 2008, the Pretrial Conference is premature as the  
25 motions may impact the issues remaining in the case. Therefore, the parties  
26 respectfully request that the Court continue the Pretrial Conference for 30  
27 days or to some date after the Court hears the parties' dispositive motions.  
28

1           3.           Pursuant to the parties' stipulation, the Court by order filed on November  
2                           21, 2007 continued the deadline to complete expert discovery to January 31,  
3                           2008. A true and correct copy of the Stipulation and Order is attached  
4                           hereto as **Exhibit B**. Although the parties have been working diligently in  
5                           scheduling the expert depositions, due to scheduling conflicts and the  
6                           unavailability of experts, the parties are not likely able to do so before the  
7                           close of expert discovery which is January 31, 2008. Accordingly, the  
8                           parties respectfully request that the Court extend the expert discovery  
9                           deadline from January 31, 2008 to February 29, 2008.

10           NOW, THEREFORE, IT IS HEREBY STIPULATED that

- 11           1. The dispositive hearing deadline be continued to March 17, 2008;  
12           2. The Preliminary Pretrial and Trial Setting Conference be continued to a date at least  
13                30 days from March 3, 2008 or to some other date after the Court hears the parties'  
14                dispositive motion; and  
15           3. The expert discovery deadline has been extended to February 29, 2008.

16           IT IS SO STIPULATED.

17  
18           Dated: Dec. 20, 2007

BARGER & WOLEN LLP

19  
20           By: 

21           Thomas R. Beer  
22           William Lee  
23           Attorneys for Counterclaim Defendant  
24           NATIONAL UNION FIRE  
25           INSURANCE COMPANY OF  
26           PITTSBURGH, PA  
27  
28

1 Dated: December 20, 2007

SQUIRE, SANDERS & DEMPSEY LLP

2  
3 By: Marc J. Shrake / jrs

Marc J. Shrake  
Attorneys for Defendant and  
Counterclaimant  
ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY

4  
5  
6  
7 Dated: \_\_\_\_\_, 2007

NEWTON REMMEL

8  
9 By: \_\_\_\_\_

Stephen L. Newton  
Gabriel G. Gregg  
Attorneys for Plaintiff and Counterclaim  
Defendant  
FEDERAL INSURANCE COMPANY

10  
11  
12  
13  
14 **ORDER**

15 Pursuant to the foregoing stipulation and good cause appearing,

- 16 1. The dispositive hearing deadline shall be continued from February 4, 2008 to March  
17 17, 2008;
- 18 2. The Preliminary Pretrial and Trial Setting Conference be continued to  
19 \_\_\_\_\_ at 11:00 a.m. in Courtroom 8; and
- 20 3. The expert discovery deadline has been extended to February 29, 2008.

21 **IT IS SO ORDERED.**

22  
23 Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
The Honorable James Ware  
U.S. District Court Judge

1 Dated: \_\_\_\_\_, 2007

SQUIRE, SANDERS & DEMPSEY LLP

2  
3 By: \_\_\_\_\_

Marc J. Shrake  
Attorneys for Defendant and  
Counterclaimant  
ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY

4  
5  
6  
7 Dated: December 20, 2007

NEWTON REMMEL

8  
9 By: \_\_\_\_\_

Stephen L. Newton  
Gabriel G. Gregg  
Attorneys for Plaintiff and Counterclaim  
Defendant  
FEDERAL INSURANCE COMPANY

10  
11  
12  
13  
14 **ORDER**

15 Pursuant to the foregoing stipulation and good cause appearing,

- 16 1. The dispositive hearing deadline shall be continued from February 4, 2008 to March  
17 17, 2008;
- 18 2. The Preliminary Pretrial and Trial Setting Conference be continued to  
19 April 14, 2008 at 11:00 a.m. in Courtroom 8. Pretrial Conference statement  
20 due April 4, 2008
- 21 3. The expert discovery deadline has been extended to February 29, 2008.

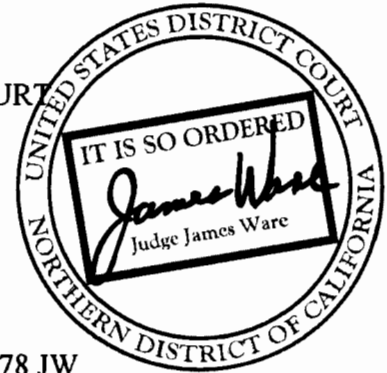
22 **IT IS SO ORDERED.**

23 Dated: January 2, 2007

James Ware  
The Honorable James Ware  
U.S. District Court Judge

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT  
SAN JOSE DIVISION



FEDERAL INSURANCE COMPANY, an  
Indiana corporation,

Plaintiff,

vs.

ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY, a Minnesota  
corporation,

Defendant.

ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY, a Minnesota  
corporation,

Counter-Claim Plaintiff,

vs.

FEDERAL INSURANCE COMPANY, an  
Indiana corporation, and NATIONAL  
UNION FIRE INSURANCE COMPANY  
OF PITTSBURGH, PA, a Pennsylvania  
corporation

Counter-Claim Defendants.

Case No. C 05 01878 JW

**STIPULATION AND [PROPOSED]  
ORDER EXTENDING THE DEADLINE  
TO COMPLETE EXPERT DISCOVERY**

**STIPULATION AND [PROPOSED] ORDER  
EXTENDING THE DEADLINE TO COMPLETE  
EXPERT DISCOVERY**



1  
2 Pursuant to Civil Local Rules 6-2 and 7-12, the Parties submit the following Stipulation  
3 and [Proposed] Order Extending the Deadline to Complete Expert Discovery:

4 **WHEREAS:**

5 1. This action was filed by Federal Insurance Company ("Federal") against St. Paul  
6 Fire and Marine Insurance Company ("St. Paul") on May 6, 2005. On June 24, 2005, St. Paul  
7 filed a counterclaim against Federal and National Union Fire Insurance Company of Pittsburgh,  
8 PA ("National Union").

9 2. The close of discovery is currently scheduled for November 21, 2007.

10 3. A Scheduling Order was issued on July 12, 2006, essentially adopting the schedule  
11 in the parties' Joint Case Management Statement and Proposed Order. A copy of this Scheduling  
12 Order is attached as Exhibit A.

13 4. A Stipulation and Order Extending Certain Trial Dates was issued on February 27,  
14 2007, due to the time necessary to analyze voluminous discovery including a database produced  
15 by Cirrus Logic exceeding 500 Giga Bytes and to locate and arrange for the depositions of certain  
16 witnesses no longer employed by any party. A copy of this Stipulation and Order is attached as  
17 Exhibit B.

18 5. A Stipulation and Order Extending Certain Scheduled Dates was issued on May  
19 14, 2007, due to the extraordinary circumstances of Zelle, Hofmann, Voelbel, Mason & Gette  
20 LLP, St. Paul's counsel's law firm of record, announcing the closure of its Los Angeles office. A  
21 copy of this Stipulation and Order is attached as Exhibit C.

22 6. A Stipulation and Order Extending Certain Scheduled Dates was issued on August  
23 8, 2007, due to the time necessary for Marc J. Shrake, St. Paul's counsel, to transition from Zelle,  
24 Hofmann, Voelbel, Mason & Gette LLP to Squire, Sanders & Dempsey L.L.P. A copy of this  
25 Stipulation and Order is attached as Exhibit D.

26 7. All parties have been working diligently to complete discovery in this complex  
27 insurance coverage matter before November 21, 2007. To date, seven fact witness depositions  
28 have been taken, and five additional depositions are currently scheduled.



1 8. St. Paul served its expert witness designation on September 20, 2007.

2 9. Federal served its rebuttal expert disclosure on October 5, 2007, to which National  
3 Union has served a joinder.

4 10. Federal filed its Motion for Summary Judgment on October 15, 2007 and St. Paul  
5 filed its Cross-Motion for Summary Judgment on November 5, 2007. The hearing on these  
6 motions is currently set for December 10, 2007. The last day to hear dispositive motions is  
7 February 4, 2008.

8 11. The parties are attempting reasonably and expediently to schedule the depositions  
9 of the four expert witnesses who have been designated, but are not likely to be able to do so  
10 before the close of discovery.

11 12. Accordingly, the parties wish to extend from November 21, 2007 to January 31,  
12 2008, the deadline to complete expert discovery.

13 **NOW, THEREFORE, IT IS HEREBY STIPULATED** that expert discovery shall be  
14 completed by January 31, 2008.

15 **IT IS SO STIPULATED.**

16  
17 Dated: November 8, 2007

NEWTON REMMEL

18  
19 By: 

20 Stephen L. Newton  
21 Gabriel G. Gregg  
22 Attorneys for Plaintiff and Counterclaim  
23 Defendant  
24 FEDERAL INSURANCE COMPANY

25  
26 Dated: November 8, 2007

SQUIRE, SANDERS & DEMPSEY L.L.P.

27  
28 By: 

Marc J. Shrake  
Attorneys for Defendant and  
Counterclaimant  
ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FEDERAL INSURANCE COMPANY, an  
Indiana corporation,

Plaintiff,

vs.

ST. PAUL FIRE & MARINE INSURANCE  
COMPANY, a Minnesota corporation,

Defendant.

AND RELATED COUNTERCLAIM.

) Case No: C 05-01878 JW

) **STIPULATION AND [PROPOSED]**  
) **ORDER EXTENDING CERTAIN**  
) **SCHEDULED DATES**

STIPULATION AND [PROPOSED] ORDER EXTENDING CERTAIN SCHEDULED DATES

1 Pursuant to Civil Local Rules 6-2 and 7-12, the Parties submit the following Stipulation  
2 and [Proposed] Order Extending Certain Scheduled Dates:

3 **WHEREAS,**

4 1. This action was filed by Federal Insurance Company ("Federal") against St. Paul  
5 Fire and Marine Insurance Company ("St. Paul") on May 6, 2005. On June 24, 2005, St. Paul  
6 filed a counterclaim against Federal and National Union Fire Insurance Company of Pittsburgh,  
7 PA ("National Union").

8 2. Extraordinary circumstances require that St. Paul request that the scheduling in  
9 this case to extended by approximately 30 days.

10 3. St. Paul has been represented throughout this case by attorney Marc Shrake,  
11 formerly of the Los Angeles office of Zelle, Hofmann, Voelbel, Mason & Gette LLP ("Zelle  
12 Hofmann").

13 4. On May 1, 2007, Zelle Hofmann announced the closure of its Los Angeles  
14 office. Based on this development, St. Paul requested, and Federal and National Union agreed,  
15 and the Court entered an Order on May 14, 2007, to extend the dates in this case by  
16 approximately 60 days. A copy of this Scheduling Order is attached as Exhibit A.

17 5. Mr. Shrake has now joined the law firm of Squire, Sanders & Dempsey L.L.P.  
18 ("Squire Sanders"), and St. Paul is in the process of transferring responsibility for this case to  
19 Mr. Shrake at his new firm. However, Mr. Shrake has advised counsel for Federal and  
20 National Union that he has encountered possible conflict issues and is working diligently to  
21 resolve them, including obtaining any necessary consents or waivers from Federal and National  
22 Union and/or their respective affiliated companies. Mr. Shrake anticipates that these matters  
23 can be resolved in the next 30 days.

24 6. The Parties have, to date, completed five depositions and, on July 23,  
25 participated in a mediation with Mr. Martin Quinn of JAMS in San Francisco. The parties are  
26 continuing to discuss possible resolution of this case through Mr. Quinn via telephone.

27  
28 STIPULATION AND [PROPOSED] ORDER EXTENDING CERTAIN SCHEDULED DATES

1           7.       A Scheduling Order was issued on July 12, 2006, essentially adopting the  
2 schedule in the parties' Joint Case Management Statement and Proposed Order. A copy of this  
3 Scheduling Order is attached as Exhibit B.

4           8.       A Stipulation and Order Extending Certain Trial Dates was issued on February  
5 27, 2007, due to the time necessary to analyze voluminous discovery including a database  
6 produced by Cirrus Logic exceeding 500 Giga Bytes and to locate and arrange for the  
7 depositions of certain witnesses no longer employed by any party. A copy of this Stipulation  
8 and Order is attached as Exhibit C.

9 **NOW, THEREFORE, IT IS HEREBY STIPULATED** that the following scheduled dates,  
10 which have not yet passed, should be extended and rescheduled by approximately 30 days, or  
11 as soon thereafter as permitted by the Court, as follows:

- 12           • Close of Discovery shall be **November 21, 2007** (formerly October 24, 2007).
- 13           • Last Date for Hearing Dispositive Motions shall be **February 4, 2008** (formerly  
14 January 7, 2008).
- 15           • Preliminary Pretrial Conference Statements shall be due **February 22, 2008**  
16 (formerly January 23, 2008).
- 17           • The Preliminary Pretrial Conference and Trial Setting Conference shall be  
18 scheduled for Monday, **March 3, 2008** (formerly February 4, 2008).
- 19           • All associated dates set forth in the Scheduling Order, which have not yet passed,  
20 including expert witness disclosures, expert witness reports, expert witness  
21 objections, and rebuttal expert witness disclosures, are also extended and  
22 rescheduled by 30 days.

23

24

25

26

27

28

1

2 IT IS SO STIPULATED.

3 Dated: August \_\_\_\_\_, 2007

NEWTON REMMEL

4

5

By: \_\_\_\_\_

6

Stephen L. Newton  
Gabriel G. Gregg  
Attorneys for Plaintiff and Counterclaim  
Defendant  
FEDERAL INSURANCE COMPANY

7


8

9

10 Dated: August 2, 2007

11

By: \_\_\_\_\_

  
Marc J. Shrake  
Attorney for Defendant and Counterclaim  
Plaintiff  
ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY

12

13

14

15

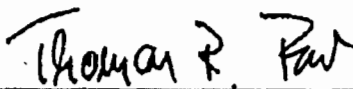
16 Dated: August 1, 2007

17

BARGER & WOLEN LLP

18

By: \_\_\_\_\_



Thomas Beer  
Attorneys for Counterclaim Defendant  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA

19

20

21

22

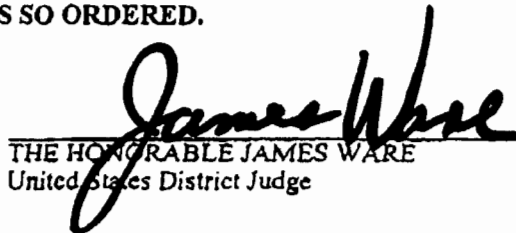
ORDER

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24

25 Dated: August 8, 2007

26

  
THE HONORABLE JAMES WARE  
United States District Judge

27

28

STIPULATION AND (PROPOSED) ORDER EXTENDING CERTAIN SCHEDULED DATES

1  
2 **IT IS SO STIPULATED.**

3 Dated: August 6, 2007

NEWTON REMMEL

4  
5 By: Stephen J. Newton

6 Stephen L. Newton  
7 Gabriel G. Gregg  
8 Attorneys for Plaintiff and Counterclaim  
9 Defendant  
10 FEDERAL INSURANCE COMPANY

11  
12 Dated: August \_\_\_\_\_, 2007

13 By: \_\_\_\_\_

14 Marc J. Shrake  
15 Attorney for Defendant and Counterclaim  
16 Plaintiff  
17 ST. PAUL FIRE AND MARINE  
18 INSURANCE COMPANY

19  
20 Dated: August \_\_\_\_\_, 2007

BARGER & WOLEN LLP

21  
22 By: \_\_\_\_\_

23 Thomas Beer  
24 Attorneys for Counterclaim Defendant  
25 NATIONAL UNION FIRE INSURANCE  
26 COMPANY OF PITTSBURGH, PA

27 **ORDER**

28 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: August \_\_\_\_\_, 2007

THE HONORABLE JAMES WARE  
United States District Judge